

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF LAWRENCEBURG, KENTUCKY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 96-256
)	
SOUTH ANDERSON WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

South Anderson Water District ("South Anderson") has moved to dismiss the City of Lawrenceburg's ("Lawrenceburg") complaint for lack of subject matter jurisdiction.¹ At issue is whether the Commission has jurisdiction to decide a dispute between a municipal water utility and a public water utility over service territory and the ownership of a water main. Finding that the Commission lacks such jurisdiction, we grant South Anderson's motion and dismiss the complaint.

Lawrenceburg, a city of the fourth class, owns and operates water production and distribution facilities which are used to provide retail water service within its corporate limits and in contiguous non-incorporated areas of Anderson County. Lawrenceburg also provides wholesale water service to South Anderson and Alton Water and Sewer District.

¹ South Anderson's motion followed the Commission's Order of January 23, 1998 in which the Commission directed the parties to submit written memoranda on the issue of subject matter jurisdiction.

South Anderson is a water district organized pursuant to KRS Chapter 74. It, owns and operates water distribution facilities which serve approximately 1,375 customers in southern Anderson County. It purchases its total water supply from Lawrenceburg through four master meters.

Lawrenceburg has brought a formal complaint against South Anderson over the water district's plans to relocate two of these meters. The meters at issue are located on Jenny Lillard Road and at the intersection of U.S. Highway 127 Bypass and U.S. Highway 62. In its Complaint, Lawrenceburg alleges that South Anderson intends to relocate these meters without Lawrenceburg's permission and the relocation would adversely affect Lawrenceburg's operations and enable South Anderson to serve existing Lawrenceburg customers. Lawrenceburg requests, inter alia, that South Anderson be required to maintain its facilities in their current configuration and be prohibited from interfering with Lawrenceburg's "facilities, operations, and customers." Complaint at 3.

South Anderson admits its intention to relocate the master meters, but denies that such relocation would interfere with Lawrenceburg's operations or facilities. It states that Lawrenceburg's permission to relocate the master meters is unnecessary as the meters will be relocated on South Anderson's water mains. It disavows any intention of serving existing Lawrenceburg customers.

Before the merits of the complaint can be considered, we must first determine if the Commission has jurisdiction over it. The Commission is "a creature of statute and has only such powers as have been granted to it by the General Assembly." Boone County Water and Sewer District v. Public Service Commission, Ky., 949 S.W.2d 588, 591 (Ky. 1997). See also Croke v. Public Service Commission of Kentucky, Ky.App.,

573 S.W.2d 927, 929 (1978) ("The Public Service Commission's powers are purely statutory; like other administrative boards and agencies, it has only such powers as are conferred expressly or by necessary or fair implication."). KRS 278.040(1) provides that the Commission has the authority to regulate public utilities and to enforce the provisions of KRS Chapter 278. This authority to regulate public utilities, however, extends only to rates and service. KRS 278.040(2).

No issues related to South Anderson's rates or service appear on the face of Lawrenceburg's complaint. No mention is made of the rates that South Anderson charges for water service. No reference is made to any aspect, including "the purity, pressure, and quantity" of the service that South Anderson provides. Given that Lawrenceburg is not a customer of South Anderson, the complaint's silence on these issues is not surprising.

Lawrenceburg's pleadings make readily apparent that the principal issue in this proceeding is not utility rates or service, but the parties' right to serve certain portions of Anderson County. Lawrenceburg has advised the Commission that the principal issue in this proceeding is

whether service to customers in the Indian Hills Subdivision, Creekside Subdivision and U.S. 127 bypass - U.S. 62 intersection **are to be served by South Anderson Water District or the City of Lawrenceburg.**

Lawrenceburg's response to the Commission's Order of January 23, 1998 at 1 (emphasis added). Lawrenceburg emphasizes this issue in its complaint where it notes that the proposed relocation will "allow the District to serve customers currently served by the city and to extend service to properties currently served by the city" and requests

that South Anderson be ordered to refrain from interfering with the . . . customers of city." Complaint at ¶ 11 and 20.

Lawrenceburg also identifies "the ownership of certain water facilities currently used by the City to provide service" to customers in the disputed territory as the other principal issue before the Commission. Response at 1. In its complaint, it asserts that South Anderson is unlawfully asserting control over facilities which Lawrenceburg owns and requests that the water district be restrained from interfering with its ownership and use of the water facilities. It repeats these allegations in a later pleading. Id. at 2-4. In this regard, Lawrenceburg's complaint resembles an action to quiet title or an action of trespass.

Nothing within KRS Chapter 278 authorizes this Commission to establish exclusive service territories for water utilities. See Kentucky Utilities Co. v. Pub. Serv. Com'n, Ky. 390 S.W.2d 168, 175 (1965) (stating that existing utilities do not "have any right to be free of competition."). Kentucky-American Water Co., Case No. 91-359 (Ky. P.S.C. (Apr. 17, 1992); Mountain Utilities, Inc. v. Equitable Gas Co., Case No. 91-316 (Ky.P.S.C. Apr. 6, 1992). Cf. Re Flowing Wells, Inc., 180 PUR4th 117 (Ind. URC 1997). Neither KRS Chapter 96, which governs the operation and governance of municipal utilities, nor KRS Chapter 74, which governs water districts, conveys such authority to the Commission. Nor does the Commission have any legal authority to resolve territory disputes that arise between municipal water utilities and public water utilities. City of Georgetown, Kentucky v. Pub. Serv. Com'n, Ky., 516 S.W.2d 842 (1974).

We are also unable to locate any authority for the proposition that the Commission may resolve a dispute over the ownership of property. Such disputes fall solely with the

domain of the courts of justice. See Carr v. Cincinnati Bell, Inc., Ky.App., 651 S.W.2d. 128 (1983). See also Kentucky Constitution §14.

Attempting to bootstrap an argument for jurisdiction, Lawrenceburg argues that KRS 278.260(1) grants the Commission "original jurisdiction over complaints as to rates or service of any utility," and the authority to hear the complaints of those who are affected by improper practices affecting or related to utility service. It asserts that South Anderson's efforts to change "its 'practice' of not serving or offering to serve" persons in certain areas of Anderson County through the relocation of master meters is an improper practice related to utility service.

KRS 278.260(1) authorizes the Commission to hear "complaints as to rates or service of any utility." Upon hearing such complaint and finding that a utility's practice is "unjust, unreasonable, unsafe, improper, inadequate or insufficient," the Commission may prescribe the "just, reasonable, safe, proper, adequate or sufficient" practice that the utility must follow. KRS 278.280(1). Lawrenceburg's definition of "practice," however, is so broadly drawn that it would bring virtually every utility act, function, and operation remotely involved in the provision of utility service within the Commission's jurisdiction and subsume the statutory limitations upon that jurisdiction. It would in effect authorize the Commission to hear and decide questions that have historically been held to be within the exclusive purview of the courts.

Lawrenceburg's definition of "practice," furthermore, is not consistent with the limited statutory definition of "service." KRS 278.010(11) defines "service" as

any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure, of gas, **the purity, pressure, and quantity of water**, and in general the quality, quantity, and pressure of

any commodity or product used or to be used for or in connection with the business of any utility [emphasis added].

Given this definition, it appears that the General Assembly intended for "service" to include how the utility product was provided and its general nature and quality, not its geographical availability.

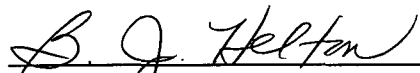
Based upon the foregoing, the Commission finds that the issues presented by Lawrenceburg's complaint are not within the Commission's jurisdiction and that the complaint should be dismissed.

IT IS THEREFORE ORDERED that:

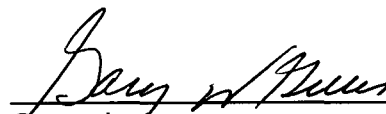
1. South Anderson's Motion to Dismiss is granted.
2. Lawrenceburg's complaint is dismissed for lack of subject matter jurisdiction.
3. This matter shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 11th day of June, 1998.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director